

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.430 of 2000

Date of Decision : September 27, 2006.

Prithipal Singh Chaudhary Petitioner

Vs.

Balwant Singh Garcha Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Arun Jain, Advocate
for the petitioner.

Mr.Sumeet Mahajan, Advocate
for the respondent.

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P.S.Patwalia, J. (Oral) :

The present revision petition has been filed by the tenant against the order dated 7.1.2000 whereby the petition was allowed and the tenant was directed to hand over the vacant possession of the house in dispute to the landlord.

The landlord had filed the petition on 6.11.1990 stating that he had joined the Indian Army on 15.6.1967 and was to retire from service on 31.10.1990. He alleged that he had purchased the property being a

residential house constructed on 249 sq. yards. situated at Ludhiana from one Kulwant Singh vide registered sale deed dated 15.11.1989. He therefore claimed that he was owner of the property in dispute and the respondent in the said petition was a tenant in the said property on monthly rent of Rs.200/- per month. He further claimed that he intended to settle in the said property after his retirement and therefore desired to get it vacated.

Notice of the petition was issued to the tenant who filed an application for permission to contest the same. Permission was granted and thereafter a written statement was filed. In the written statement the tenant took the objection that there did not exist any relationship of landlord and tenant between the parties. He further stated that the alleged sale deed is a sham document. It is his case that the petitioner is married to the wife's sister of one Kulwant Singh who was actually the owner of the property. In fact the petitioner had another residential house located at Dhandari Kalan which is also within the municipal limits of Ludhiana and this fact has not been disclosed by the petitioner in his petition. He further contended that no certificate as required by Section 13-A from the authority competent to remove the landlord from service had been attached with the petition and hence this requirement was also not fulfilled. He therefore prayed for dismissal of the petition on the aforesaid grounds.

The learned Rent Controller after examining the evidence led by the parties did not find any merit in the contentions raised by the tenant. Hence the petition was allowed. It is against the aforesaid order that the present revision petition has been filed.

I have heard Mr.Arun Jain, learned counsel appearing for the petitioner and Mr.Sumeet Mahajan, learned counsel appearing for the

respondent and have also gone through the paper book as also the evidence led before the Rent Controller. Mr.Jain, learned counsel for the petitioner has assailed the findings recorded by the Rent Controller on the following grounds :-

- (i) Firstly he submits that the sale deed dated 15.11.1989 executed by Kulwant Singh and Mohinder Singh in favour of Balwant Singh is a sham transaction and hence the petitioner-respondent is not a specified landlord entitled to seek eviction under Section 13-A of the East Punjab Urban Rent Restriction Act, 1949 (herein after referred to as the Act).
- (ii) Secondly he has contended that Balwant Singh had another residential property in Ludhiana and hence was not entitled to seek eviction of the tenant from this property.
- (iii) Thirdly it is contended that the certificate attached along with the petition certifying the date of retirement has been issued by the Inspector General of Police (Administration) and not by the President of India and therefore is not a valid certificate in terms of Section 13-A of the Act.
- (iv) Lastly the learned counsel contended that the petitioner in fact cannot be said to be the landlord of the respondent as neither he had inducted the tenant in the property nor had he ever claimed any rent from the tenant.

On the other hand, learned counsel for the landlord-respondent states that as per Section 54 of the Transfer of Property Act, 1982 sale is defined as transfer of ownership in exchange for a price paid or promised to be paid or part paid and part promised. He contends that in the present case

it has sufficiently come on the record that consideration of a sum of Rs.1,45,000/- was paid and the transaction was made by way of registered sale deed. It has also come on record that the landlord had retired on 31.10.1990 and the present petition was filed within one year from his date of retirement. Thus according to the learned counsel it is a clear case where the landlord is entitled to seek eviction of the tenant under Section 13-A of the Act. He further submits that Kulwant Singh the original owner had died on 19.5.1999 and Balwant Singh the landlord is also 74 years old today. The property was let out to the tenant in the year 1970. He has enjoyed the property for the last 36 years. He further states that another fact which this Court cannot loose sight of is that it has come in the cross-examination of the petitioner-tenant that he has his own residential house constructed at 500 sq. yards plot at Sarabha Nagar in Ludhiana which is a posh residential locality. As per Ex.R-1 the same had been rented out by the tenant to somebody else in May 1984 when the said letter was written by Kulwant Singh. He therefore submits that findings recorded by the Rent Controller should be upheld and the present revision petition dismissed.

Elaborating the first contention Mr.Jain submits that in the present case the seller Kulwant Singh was none other than the husband of Balwant Singh's sister-in-law. They were thus closely related. He states that in fact this entire transaction of sale was a sham transaction which was only for the purpose of taking advantage of the fact that Balwant Singh was to retire on 31.10.1990 and on that basis seek the eviction of the petitioner from the demised property. He has drawn my attention to that portion of statement of Kulwant Singh where in the examination-in-chief he has stated that after receiving a sum of Rs.15,000/- in advance the balance

amount of Rs.1,30,000/- was received by draft. He thereafter referred to cross-examination of Kulwant Singh to point out that there Kulwant Singh states that the sum of Rs.1,30,000/- was taken in cash. He has also referred to statement of AW-2 Parbram Singh Sethi, the property dealer who facilitated the transaction wherein it has been mentioned that the aforesaid sum was paid in cash. He has also referred to the statement of Balwant Singh where again Balwant Singh states that the amount of Rs.1,30,000/- was paid before the Sub Registrar in cash. He further states that the sale deed reveals that the amount was paid by draft. He therefore states that there is a serious contradiction between the statement recorded in the sale deed and statement of witnesses. He further submits that no details of bank draft are forthcoming. He also submits that even though the witnesses have submitted that a sum of Rs.15,000/- was paid in advance but no details of the said payment are also forthcoming. He further submits that the property in dispute was the joint property of four persons i.e. Kulwant Singh, his father Mohinder Singh, Bhagat Singh, brother of Mohinder Singh and his son Amarjit Singh. He therefore submits that a joint property of four persons could not have been sold by two alone. He has also submitted that no Power of Attorney has been produced by Balwant Singh authorising Parbram Singh Sethi to pay the money on his behalf. He also submitted that the property has not been recorded in the municipal records as belonging to Balwant Singh. On the aforesaid premises he submits that the transaction of sale is nothing but a sham transaction. On the other hand learned counsel for the respondent submits that it is no doubt correct that at one place in the evidence and in the sale deed the fact of money having been paid by draft is mentioned however money was actually paid in cash. He submits that

this error may have occurred as Balwant Singh was then serving in Border Security Force and was posted at Patna. He had therefore authorised Parbram Singh Sethi to conclude the transaction on his behalf. He further states that in fact Kulwant Singh and Mohinder Singh are residents of Calcutta. Their business is being carried on at Calcutta. They also used to come to Ludhiana only off and on. Since parties were closely related and Kulwant Singh and others were desirous of selling the property which was under the occupation of the tenant and Balwant Singh's father was residing at Ludhiana, Balwant Singh decided to purchase the same. Since there was close relation between the families and complete trust between them the transaction was primarily looked after by Parbram Singh Sethi. He submits that the entire plot is of 500 sq. yards. On this plot two houses each of 250 sq. yards with independent entrances, were built. One house is in occupation and ownership of Bhagat Singh and Amarjit Singh and other house was owned and occupied by Kulwant Singh and his father Mohinder Singh. It is this portion owned by Kulwant Singh which was sold to Balwant Singh. He further submits that it is only this portion of the property which was rented out to the tenant. Thus there was two independent portions of the property and Kulwant Singh and Mohinder Singh only sold their part of the property to Balwant Singh. He further submits that Balwant Singh orally authorised Parbram Singh Sethi to pay the money on his behalf. He further drew my attention to an observation recorded in the order of Rent Controller that the entry with regard to the sale had been made in TS-1 Register, maintained by the Municipal Corporation, Ludhiana. In fact this has been duly accepted as Ex.AW-4/6. He thus submits that it was a situation where Kulwant Singh and Mohinder

Singh who were primarily residing at Calcutta were desirous of selling the property and Balwant Singh whose father resided in Ludhiana, was desirous of purchasing the same and therefore the bona fide transaction of sale had taken place.

Having examined the aforesaid contentions and documents relied upon by the learned counsel for the parties I am of the opinion that it cannot be held that the transaction of sale in the present case is a sham transaction. It is apparent that consideration of a sum of Rs.1,45,000/- has passed. The transaction is by way of a registered sale deed. Even entry of sale has been made in the municipal records. Merely because the parties happened to be related to each other, in my opinion is not sufficient to conclude that transaction is a sham transaction. Still further mentioning of the fact that the payment was made by draft whereas the payment was actually made in cash, could have occurred on account of the fact that the landlord was at that time at Patna. That instance alone would not be enough to return a finding that the transaction is a sham transaction. The argument of the learned counsel for the petitioner that property was owned by four persons also cannot be accepted in the light of the fact that it is the entire plot of 500 sq.yards which was owned by four persons. On this plot there are two independent houses. The portion of the property which was owned and possessed by Mohinder Singh and Kulwant Singh being residential house in question herein was the one which was let out to the tenant and also the one which was thereafter sold. For the aforementioned reasons I do not find any merit in the contention raised by the learned counsel for the appellant.

Learned counsel thereafter contended that Balwant Singh had

another property at Ludhiana. In this respect I have gone through the findings recorded by the Rent Controller. A reading of the same would show that the property was originally located in village Dhandari Kalan. This village did not form part of Municipal Corporation, Ludhiana as per its original boundary. It was only brought within the boundary of the Municipal Corporation some time in the year 1986. In any case it was not denied before me that at the time when the present petition was filed the house situated at Dhandari Kalan was not occupied by the landlord but by his father. The father however died on 18.3.1999 and it was only thereafter that the property devolved upon the heirs which included the landlord. That house is constructed in only 14 marlas. Apart from the landlord there are two other brothers who would also succeed to the same property. Therefore in my opinion the landlord cannot be non suited on the ground that he possessed other suitable accommodation in the local area of Ludhiana. Firstly the property was not owned and possessed by him at the time when the petition was filed. Secondly being only 1/3rd co-owner of the property in question it cannot be said in the facts and circumstances of the case that he owned and possessed another suitable accommodation. I therefore find no merit in this contention as well.

The next submission raised by Mr. Jain is that in the present case the landlord relied upon a certificate issued by the Inspector General (Administration) wherein it is certified that the landlord is to retire from service on superannuation on 31.10.1990. He submits that the certificate has not been issued by the authority competent to remove him from service. The argument raised is that the landlord has himself stated in his evidence that the Government of India is competent to remove him from service and

therefore its only the certificate issued by the President of India which would have been valid in terms of Section 13-A of the Act. On the other hand, Mr.Mahajan learned counsel for the landlord submits that the certificate is required only to ascertain whether the averment made in the petition that the landlord is to retire within an year is genuine or not. Once the factum of retirement is established and not disputed by the tenant then the form of the certificate loses significance. For this proposition he has relied upon a judgment rendered by this Court in the case of *Shri Surjit Singh and another vs. Beant Singh and others* reported as 1990 (1) PLR 238. Having examined the submission I am inclined to agree with the learned counsel for the landlord. In the present case it is not denied that the landlord was due to retire on 31.10.1990 and rather had retired on that date. In this situation the plea taken by the landlord is fully supported by the following observations of this Court in Surjit Singh's case (supra) :-

“3. Another point made out was that the certificate from the proper competent authority was not produced along with the ejectment application. Since Dr. Beant Singh has retired more than two years and nine months ago, the matter loses its significance because it is not disputed that he has retired on 31.12.1986. The certificate is required only to see whether the averment made in the petition that the petitioner is going to retire within a year of the filing of the petition or not, is supported by any material.”

The same view has been taken in the case of *Sohan Lal vs.*

Uttam Singh reported as 2004 (3) PLR 304 and the relevant observations are as hereunder :-

“10. It is further pertinent to mention that certificate Ex.A-1 amply proves the fact that the petitioner had retired from service on 31.12.1996 and the petition had been filed within one year of his retirement. Once the petitioner stood retired, the enquiry whether the certificate had been issued by an authority competent to remove the landlord-petitioner from service would lose its significance. The judgment of this Court in the case of Surjit Singh (supra) amply support this view. The employees of the Board are the employees holding an appointment in connection with the affairs of the State and would be covered by the expression 'specified landlord' as defined in Section 2 (hh) of the Act. The aforementioned view also finds support from the judgment of this Court in the case of Fateh Chand Verma, 1987 (1) RCR (Rent) 385 (supra). Therefore, the Rent Controller has committed an error by discarding the certificate Ex.A-1 as sufficient evidence of the fact that the landlord-petitioner was a retired employee and a specified landlord.”

This view was again reiterated by this Court in the case of *Kumar Khanna vs. Mohinder Sain Chopra* reported as 1990 (2) PLR 142.

The relevant observations are as hereunder :-

“...As regards the certificate of retirement, it was admitted by the tenant himself in his affidavit that the landlord has retired as alleged by him. Once it is so admitted by the tenant himself that the landlord has retired as alleged then the question or proper certificate as such loses its significance. Thus, on facts and circumstances of the case, I do not find any merit in this petition and the same is dismissed with costs.”

Since the factum of the landlord's retirement on 31.10.1990 is not disputed I am not inclined to non suit the landlord on this ground also.

Learned counsel then submits that in the present case there does not exist the relationship of landlord and tenant between the petitioner and the respondent. He submits that neither had the respondent put the petitioner in possession of the premises nor had the petitioner tendered any rent to the landlord. In fact he submits that even after the sale deed on 15.11.1989 rent was tendered to Kulwant Singh which is evident from Ex.R-5 which is a receipt dated 3.6.1990. As against this learned counsel for the respondent-landlord states that once he has purchased the property from Kulwant Singh he steps into the shoes Kulwant Singh and since the petitioner was a tenant under Kulwant Singh the relationship of the petitioner with the respondent would also be that of landlord and tenant. Still further he relies upon the definition of a specified landlord in Section 2 (hh) to contend that specified landlord has been defined to mean a person who is entitled to receive rent in respect of a building on his own account

and who is holding or has held an appointment in public service or post in connection with the affairs of the Union or of the State. He states that since the respondent is now entitled to receive the rent in respect of the building he would be covered by definition of specified landlord. Referring to the receipt dated 3.6.1990 learned counsel submits that a reading of the receipt would show that the same was in respect of the rent for the period from September 1988 to February 1989 which was prior to the sale deed which was executed on 15.11.1989. He therefore submits that the said receipt would not take the case of the landlord any further. On this issue as well I do not find merit in the contention of the learned counsel for the petitioner. I agree with the reasoning of the Rent Controller that on purchase of the property Balwant Singh had stepped into the shoes of Kulwant Singh and therefore the relationship of landlord and tenant between the petitioner and respondent has come into existence. Still further a bare reading of the definition would also show that since the respondent is entitled to receive rent in respect of this property after he became owner of the same he would be a specified landlord. As already mentioned since the receipt was for rent of an earlier period even that would not take the case of the petitioner any further.

For the reasons mentioned herein above I find no merit in this petition and the same is therefore dismissed. In the circumstances of the case however there shall be no order as to costs.

At this stage learned counsel for the petitioner states that the tenant may be granted some time to vacate the premises. Learned counsel for the respondent however states he has been waiting to take possession of the property for over a decade and the tenant has been in possession of the

same for the last three decades in spite of the fact that he has his own residential house in Sarabha Nagar, a posh locality in Ludhiana. However I am inclined to grant two months' time to the petitioner to hand over the vacant possession of the property to the landlord.

September 27, 2006

monika

(P.S.Patwalia)

Judge